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ROBERT LEE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA

Plaintiff,

vs.

ROBERT LEE, et.al.

Defendant(s)

Case No. CR-13-00566-EMC

DEFENDANT ROBERT LEE'S
MOTION TO DISMISS COUNTS 4,
5, AND 6 OF THE INDICTMENT
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT

Date: April 29, 2015

Time: 2:30 p.m.

Court: Honorable Edward M. Chen

I. INTRODUCTION

The recent Supreme Court case of *Yates v. United States*, __ U.S. __, 135 S. Ct. 1074 (2015)¹ makes 18 U.S.C. §1519 inapplicable to the conduct alleged by the government in Count 5 of the Indictment against defendant Robert Lee ("Mr. Lee"). Moreover, Count 4 of the Indictment charges a conspiracy to violate 18 U.S.C. §1519 and Count 6 of the Indictment charges use of a fire in the

¹For the Court's convenience, the *Yates* opinion is attached as Exhibit A.

1 commission of 18 U.S.C. §1519. Accordingly, Mr. Lee respectfully requests that
2 this Court dismiss Counts 4, 5, and 6 of the Indictment.

3 II. ARGUMENT

4 18 U.S.C. § 1519 does not criminalize the conduct alleged by the
5 government in Count 5 of the Indictment. Count 5 of the Indictment alleges:

6 On or about September 10, 2008, in the Northern District of
7 California, the defendants, Ryan Carroll, and Robert Lee, a/k/a
8 “Roots,” unlawfully and knowingly altered destroyed, mutilated, and
9 concealed a tangible object with the intent to impede, obstruct, and
10 influence the investigation of a matter within the jurisdiction of a
11 department and agency of the United States, to wit, the defendants set
12 fire to a 1996 Saab sedan in order to impede the investigation of the
13 robbery and murder of Reetpaul Rana, the investigation of which was
14 within the jurisdiction of the Federal Bureau of Investigation and the
15 United States Department of Justice.

16 All in violation of Title 18, United States Code, Sections 1519 and 2.

17 However, the Supreme Court recently held in *Yates* that the conduct alleged in the
18 Indictment does not violate 18 U.S.C. § 1519.

19 Section 1519 provides:

20 Whoever knowingly alters, destroys, mutilates, conceals, covers up,
21 falsifies, or makes a false entry in any record, document, or tangible
22 object with the intent to impede, obstruct, or influence the
23 investigation or proper administration of any matter within the
24 jurisdiction of any department or agency of the United States or any
25 case filed under title 11, or in relation to or contemplation of any such
26 matter or case, shall be fined under this title, imprisoned not more
27 than 20 years, or both.

28 In *Yates*, while conducting an offshore inspection of a commercial fishing vessel,
a federal agent found that the ship’s catch contained undersized red grouper. The
agent instructed the ship’s captain, John Yates, to keep the undersized fish
segregated from the rest of the catch until the ship returned to port. Yates instead
told a crew member to throw the undersized fish overboard. For this offense,
Yates was charged with destroying, concealing, and covering up undersized fish to
impede a federal investigation, in violation of 18 U.S.C. §1519.

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1 Noting that the statute was intended to prohibit document-shredding, the
 2 Supreme Court refused to read § 1519 “expansively to create a coverall spoliation
 3 of evidence statute,” and held “that a ‘tangible object’ within § 1519's compass is
 4 one used to record or preserve information.” *Yates*, 135 S. Ct. at 1088-89. Because
 5 a 1996 Saab sedan is a means of transportation, not an object used to record or
 6 preserve information, the conduct alleged in this case – setting fire to the 1996
 7 Saab sedan – does not fall within § 1519. Accordingly, Mr. Lee respectfully
 8 requests that this Court dismiss Count 5 of the Indictment.

9 In addition, Count 4 of the Indictment charges Mr. Lee with a conspiracy
 10 violate 18 U.S.C. §1519:

11 4. From at least on or about September 10, 2008, up through and
 12 including the present, in the Northern District of California and
 13 elsewhere, the defendants, RYAN CARROLL and ROBERT LEE,
 14 a/k/a “Roots,” and others known and unknown, unlawfully, willfully,
 15 and intentionally combined, conspired, confederated, and agreed
 16 together and with each other, to commit an offense against the United
 17 States, to wit, to violate Title 18, United States Code, Section 1519
 18 and 844(h)(1).

19 5. It was a part and object of the conspiracy that the defendants
 20 RYAN CARROLL, and ROBERT LEE, a/k/a “Roots,” and their co-
 21 conspirators, unlawfully and knowingly and corruptly would and did
 22 alter, destroy, mutilate, and conceal a tangible object with the intent
 23 to impede, obstruct, and influence the investigation of a matter within
 24 the jurisdiction of a department and agency of the United States, in
 25 violation of Title 18, United States Code, Section 1519.

26 6. It was further a part and an object of the conspiracy that the
 27 defendants, RYAN CARROLL, and ROBERT LEE, a/k/a “Roots,”
 28 and their co-conspirators, unlawfully and knowingly would and did
 use fire to destroy evidence in violation of Title 18, United States
 Code, Section 844(h)(1).

Overt Acts

7. In furtherance of the conspiracy and to effect the illegal object
 thereof, the following overt acts, among others, were committed in
 the Northern District of California:

a. On or about September 10, 2008, in Humboldt County,
 California, RYAN CARROLL drove an automobile belonging to
 Reetpaul Rana.

1 b. On or about September 10, 2008, in Humboldt County,
2 California, ROBERT LEE called an individual to request a ride.

3 c. On or about September 10, 2008, in Humboldt County,
4 California, RYAN CARROLL and ROBERT LEE set fire to an
5 automobile belonging to Reetpaul Rana.

6 All in violation of Title 18 United States Code Section 371.

7 And Count 6 of the Indictment charges Mr. Lee with use of a fire in the
8 commission of 18 U.S.C. §1519:

9 9. On or about September 10, 2008, in the Northern District of
10 California, the defendants, RYAN CARROLL and ROBERT LEE,
11 a/k/a "Roots," unlawfully and knowingly used fire to commit a felony
12 which may be prosecuted in a court of the United states [sic], to wit,
13 the violation of Title 18, United States Code, Section 371 charged in
14 Count Four and violation of Title 18, United States Code Section
15 1519 charged in Count Five.

16 All in violation of Title 18, United States Code, Sections 844(h)(1) and 2.

17 Because Counts 4 and 6 depend on the violation of 18 U.S.C. §1519 in Count 5,
18 Mr. Lee respectfully requests that this Court dismiss Counts 4 and 6 as well.

19 Dated: April 20, 2015

Respectfully Submitted
TAMOR & TAMOR

/S/

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